Tengku Jaffar bin Tengku Ahmad v Karpal Singh

HIGH COURT (KOTA BHARU) — CIVIL SUIT NO 22-165-1992
IDRIS YUSOFF J
29 MAY 1993

Civil Procedure *— Locus standi — What constitutes locus standi — Various approaches by the court — Test for locus standi*

Civil Procedure *— Jurisdiction — Issues relating to criminality — Whether issues come within purview of civil court*

Civil Procedure *— Locus standi — Whether plaintiff could institute proceedings under the Sedition Act 1948 — Control of the Attorney General over all prosecutions — Sedition Act 1948 ss 4 & 5 — Federal Constitution art 145(3)*

Civil Procedure *— Libel — Matters relating to criminality — Power to make declaration discretionary — Rules of the High Court 1980 O 15 r 16*

Civil Procedure *— Pleadings — Striking out — Writ and statement of claim — Defendant put in unconditional appearance — Whether defendant was precluded from applying to strike out writ and statement of claim — Rules of the High Court 1980 O 18 r 19*

Tort *— Libel and slander — Locus standi — Private right distinguished from public right — Defamatory words must bear specific reference to plaintiff — Whether by referring to the rulers the defendant had defamed the Malay race and the plaintiff*

The plaintiff filed an action against the defendant seeking, inter alia, four declarations, that: (1) the statement or words uttered by the defendant as published in the *Berita Harian* dated 14 December 1992 were tantamount to seditious libel; (2) it was sedition to degrade any ruler or sultan in the way the defendant did; (3) by degrading the rulers, the defendant had indirectly degraded the Malays; and (4) the court had unlimited powers to grant a declaration and injunction if requested by any person if the sultan was reluctant to commence legal proceedings, and any subject can do so otherwise the Malay subjects or citizens would have no remedy for injustice. The defendant applied to strike out the plaintiff's writ of summons and statement of claim under O 18 r 19 of the Rules of the High Court 1980 and/or under the inherent jurisdiction of the court on the grounds that the plaintiff lacked the necessary locus standi to institute these proceedings as the same were misconceived and devoid of any basis or merit.

Held, allowing the defendant's application:

(1) The power to dismiss an action summarily without permitting the plaintiff to proceed to trial is a drastic one and it was well established that the court could adopt the summary procedure under O 18 r 19 where the claim was 'obviously unsustainable'.

(2) To possess locus standi, the applicant should be seeking to protect or vindicate an interest of his own. The plaintiff, purely on the ground of being of the Malay race and a subject of Sultan of Kelantan, was not clothed with the necessary locus standi since there was no form of interference of his private right beyond that of any other Malays and subjects of the Sultan of Kelantan. Therefore, the plaintiff had no locus standi to bring this suit against the defendant.

(3) Issues which relate to alleged criminality do not come within the purview of a civil court as otherwise the civil court might be accused of intruding into the domain of the criminal court. Here, the plaintiff had made a complaint to the wrong forum and it should be left to the Attorney General to bring an action in such a case.

(4) The power to make a declaration under O 15 r 16 is discretionary and to qualify for a declaration the plaintiff must show not only it is not inequitable for the court to grant but also it is not contrary to the accepted principle upon which the court exercises its discretion.

(5) Where a defendant is not challenging the validity of the writ or service thereof, it is not necessary for him to file a conditional appearance.

(6) The context of the words uttered by the defendant did not show that such utterance was intended to or meant for the plaintiff. The objectionable words were not defamatory in character, even to bring in aid the concept of innuendo, and what was more, it was too remote to bear any reference to the plaintiff. It is trite law that the person who can maintain an action against the defendant is the one who is defamed and not any other individual as an action for defamation is purely a personal one and neither can it be assigned. It is not sufficient if the words referred to a class of person or to a particular race.

[Bahasa Malaysia summary

Plaintif telah memfailkan suatu tindakan terhadap defendan untuk memohon, antara lain, empat deklarasi, iaitu bahawa: (1) pernyataan atau perkataan-perkataan yang disebutkan oleh defendan sepertimana yang disiarkan dalam akhbar *Berita Harian* bertarikh 14 Disember 1992 merupakan libel hasutan; (2) adalah menjadi hasutan untuk merendahkan maruah pemerintah atau sultan dalam cara yang dilakukan oleh defendan; (3) dengan merendahkan maruah pemerintah, defendan telah secara tidak langsung merendahkan maruah orang-orang Melayu; dan (4) mahkamah mempunyai kuasa yang tidak terhad untuk memberi satu deklarasi serta injunksi jika dipohon oleh sesiapapun sekiranya sultan enggan untuk memulakan prosiding undang-undang dan mana-mana rakyat boleh berbuat demikian kerana sekiranya tidak, rakyat atau warganegara Melayu tidak mempunyai apa-apa remedi terhadap ketidakadilan. Defendan telah memohon

untuk membatalkan writ saman serta pernyataan tuntutan plaintif di bawah A 18 k 19 Kaedah-Kaedah Mahkamah Tinggi 1980 dan/atau di bawah bidangkuasa sedia ada mahkamah atas alasan bahawa plaintif tidak mempunyai locus standi yang diperlukan untuk memulakan tindakan ini yang salah tanggap dan tidak mempunyai sebarang asas atau merit.

Diputuskan, membenarkan permohonan defendan:

(1) Kuasa untuk menolak suatu tindakan secara terus tanpa membenarkan plaintif menerus ke perbicaraan adalah suatu kuasa yang mendadak dan sudah dimantapkan bahawa mahkamah boleh mengamalkan prosedur terus di bawah A 18 k 19 ini apabila tuntutan itu adalah 'obviously unsustainable'.

(2) Untuk mempunyai locus standi, pemohon patut berusaha untuk melindungi atau mewajarkan kepentingannya sendiri. Plaintif, hanya atas alasan bahawa beliau adalah seorang berbangsa Melayu dan seorang rakyat Sultan Kelantan, tidak mempunyai locus standi yang diperlukan kerana tidak terdapat sebarang gangguan hak persendiriannya berbanding dengan orang Melayu serta rakyat Sultan Kelantan yang lain. Oleh itu, plaintif tidak mempunyai locus standi untuk membawa tindakan ini terhadap defendan.

(3) Isu-isu yang berkaitan dengan perkara jenayah tidak termasuk dalam bidang mahkamah sivil kerana kalau sedemikian, mahkamah sivil mungkin dituduh mencerobohi bidang kuasa mahkamah jenayah. Di sini, plaintif telah membuat aduan kepada forum yang salah dan terpulanglah kepada Peguam Negara untuk memulakan tindakan di dalam kes seperti ini.

(4) Kuasa untuk membuat suatu deklarasi di bawah A 15 k 16 merupakan kuasa budi bicara dan untuk layak mendapatkan suatu deklarasi, plaintif mesti menunjukkan bahawa bukan sahaja tidak menjadi tidak berekuiti untuk mahkamah memberikannya tetapi juga ianya tidak bertentangan dengan prinsip yang diterima oleh mahkamah apabila menggunakan budi bicaranya.

(5) Di mana defendan tidak mencabar keesahan writ ataupun penyampaiannya, tidaklah perlu bagi beliau memfailkan kehadiran bersyarat.

(6) Adalah jelas bahawa dalam konteks perkataan-perkataan yang disebutkan oleh defendan, tidak ada apa-apa yang menunjukkan bahawa penyebutan sedemikian adalah ditujukan kepada atau dimaksudkan untuk plaintif. Perkataan-perkataan yang tidak diingini itu bukanlah bersifat fitnah, walaupun mengambil kira konsep sindiran, dan lebih-lebih lagi, ianya adalah terlalu jauh (remote) untuk mempunyai sebarang rujukan kepada plaintif. Adalah undang-undang lapuk bahawa orang yang boleh membawa suatu tindakan terhadap defendan ialah orang yang difitnah dan bukanlah lain-lain individu kerana satu tindakan fitnah adalah semata-matanya suatu tindakan peribadi dan tidak boleh

diserahhakkan. Adalah tidak mencukupi sekiranya perkataan-perkataan itu merujuk kepada sekelas orang atau kepada satu bangsa yang tertentu.]

[*Editorial Note*: The plaintiff has appealed to the Supreme Court vide Civil Appeal No 02–344–93.]

Notes

For cases on locus standi, see 2 *Mallal's Digest* (4th Ed) paras 1508–1510.

For cases on the striking out of a writ and statement of claim, see 2 *Mallal's Digest* (4th Ed) paras 1828–1831.

Cases referred to

1 *Tractors Malaysia Bhd v Tio Chee Hing* [1975] 2 MLJ 1 (refd)
2 *Sim Kie Chon v Superintendent of Pudu Prison & Ors* [1985] 2 MLJ 385 (folld)
3 *Boyce v Paddington Borough Council* [1903] 1 Ch 109 (refd)
4 *Karpal Singh v Sultan of Selangor* [1988] 1 MLJ 64 (refd)
5 *Government of Malaysia v Lim Kit Siang* [1988] 2 MLJ 12 (refd)
6 *Lim Cho Hock v Government of the State of Perak & Ors* [1980] 2 MLJ 148 (refd)
7 *Tan Sri Haji Othman Saat v Mohamed bin Ismail* [1982] 2 MLJ 177 (refd)
8 *Australian Conservation Foundation Inc v Commonwealth of Australia & Ors* (1979–80) 28 ALR 257 (refd)
9 *Barnard & Ors v National Dock Labour Board & Ors* [1953] 2 QB 18; [1953] 1 All ER 1113 (distd)
10 *Atip bin Ali v Josephine Doris Nunis & Anor* [1987] 1 MLJ 82 (refd)
11 *Knupffer v London Express Newspaper Ltd* [1944] AC 116; [1944] 1 All ER 495 (refd)
12 *Bruce v Odhams Press Ltd* [1936] 1 KB 697 (refd)
13 *Gouriet v Union of Post Office Workers & Ors* [1977] 3 All ER 70 (refd)

Legislation referred to

Federal Constitution art 145(3)
Sedition Act 1948 ss 4(1), 5
Rules of the High Court 1980 O 15 r 16

Wan Mustapha bin Haji Ali (*Wan Mustapha & Co*) for the plaintiff.
Karpal Singh (*Karpal Singh & Co*) in person.

Idris Yusoff J: Mr Karpal Singh the defendant in a civil suit filed by the plaintiff applies to strike out the writ of summons dated 16 December 1993 together with the statement of claim pursuant to O 18 r 19 of the Rules of

the High Court 1980 ('the RHC') and/or under the inherent jurisdiction of the court on the following grounds:

(a) the plaintiff has no locus standi to bring the said suit. The said suit by the plaintiff is not maintainable against the defendant;
(b) the issues raised which relate to alleged criminality do not come within the jurisdiction of the honourable court;
(c) the Attorney General and no one else is vested under the provisions of art 145(3) [of the Federal Constitution] and s 5 of the Sedition Act 1948 ('the Act') with the powers to institute proceedings under the Sedition Act;
(d) the said suit is scandalous, frivolous, vexatious and/or an abuse of the process of the honourable court; and
(e) the alleged publication does not amount to defamation or sedition. There is no cause of action against the defendant.

He also seeks an order that all further proceedings in respect of the said suit be stayed pending the disposal of this application.

In his statement of claim, the plaintiff seeks a total of four declarations coupled with an injunction which are couched in the following terms:

(a) A court declaration that the statement or words uttered by the defendant Encik Karpal Singh as appeared in the *Berita Harian* dated 14 December 1992 were tantamount to seditious libel.
(b) A court declaration that it is sedition to degrade any ruler or sultan in the way the defendant did.
(c) A declaration that by degrading the ruler, the defendant, Encik Karpal Singh, had indirectly degraded the Malays.
(d) A declaration that the court has unlimited powers to grant a declaration and injunction if requested by any person if the sultan is reluctant to commence legal proceedings, and any subject can do so, otherwise the Malay subjects or citizens have no remedy for injustice.
(e) An injunction to restrain the defendant, Encik Karpal Singh, from further speaking and publishing the said or any similar sedition.

This suit arises out of a press statement allegedly made by the defendant which was published in the issue of *Berita Harian* of 14 December 1992. The statement which is alleged to be seditious and libellous was published in the following words:

> 'Akta Keselamatan Dalam Negeri (ISA) boleh digunakan untuk menahan sesiapa saja, termasuk raja kerana mereka tidak terkecuali daripada bidang kuasa berkenaan,' kata ahli Parlimen Jelutong, Karpal Singh.
>
> Beliau berkata, 'Seksyen 8(l) Akta berkenaan menyebut, Menteri Dalam Negeri boleh menahan sesiapa saja untuk tempoh tidak melebihi dua tahun jika tindakan itu dapat menghalang individu terbabit mengancam keselamatan negara.'
>
> 'Pengunaan perkataan "sesiapa saja" turut membabitkan raja. Bagaimanapun, DAP menentang penahanan mengikut ISA kerana ia dibuat tanpa perbicaraan,' katanya dalam sidang akhbar di sini, hari ini.

It is alleged by the plaintiff that by 'such impertinent slander as aforesaid the defendant is insinuating that most rulers, if not all, are capable of

committing offences under the Internal Security Act' and has indirectly classified the Malays as 'hooligans'. The plaintiff further alleges that 'not only has Mr Karpal Singh committed criminal libel under the Sedition Act but he is also liable under civil law for libel and slander against the plaintiff, being of the Malay race and a subject of the Sultan of Kelantan'.

The defendant, in support of his application to strike out the suit, maintains that to institute any proceedings in the court of law, the plaintiff must possess the necessary standing (locus standi), whereas the circumstances of this case show that the plaintiff possesses none. The allegations by the plaintiff that the defendant is liable for libel and slander, just because the plaintiff is of the Malay race and a subject of the Sultan of Kelantan, is misconceived and devoid of any basis or merit.

It must be made known from the outset that the court is not unmindful of the ruling that the power to dismiss an action summarily, without permitting the plaintiff to proceed to trial is a drastic one (see *Tractors Malaysia Bhd v Tio Chee Hing*[1]) but however, has taken note that over the years, the principle governing applications made pursuant to O 18 r 19 of the RHC has already been well established. As stated in *Sim Kie Chon v Superintendent of Pudu Prison & Ors*[2] [at p 386]:

> The principle governing the striking out of pleadings is clear in that it is only in plain and obvious cases that recourse should be had to the summary process under O 18 r 19 of the Rules of the High Court 1980: 'the summary procedure under this rule can only be adopted when it can clearly be seen that a claim or answer is on the face of it "obviously unsustainable".' (*A-G of the Duchy of Lancaster v L & NW Railway Co* [1892] 3 Ch 273) (*Supreme Court Practice 1985*).
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> On an application to strike out the statement of claim and dismiss the action, the right course for the court is to strike out the claim if it is satisfied that a claim does not disclose a reasonable cause of action.

I shall now deal with the grounds of the application.

Ground (a) — The question of locus standi

In Malaysia, the question of locus standi has been the subject of a series of judicial interpretations after considering a good number of English authorities — it dates back to the English case of *Boyce v Paddington Borough Council.*[3] In *Karpal Singh v Sultan of Selangor,*[4] Abdul Hamid CJ (Malaya) (as he then was) elaborates on the concept of and the law on locus standi. He firmly says 'an action may not be brought to court by a stranger to it'. He also explains the various approaches that may be adopted by the court in deciding the question of locus standi. One approach is to ask whether the plaintiff has 'a cause of action'. Another approach is to determine whether the plaintiff can establish a 'right' which the court may declare. Yet another approach is to require the plaintiff to demonstrate 'a special injury' resulting from the subject-matter of the declaration. A fourth approach requires the plaintiff to have an 'interest' in the subject-matter of the declaration to be litigated. A final approach leaves the question of standing to be determined by the court in the exercise of its discretion.

The concept of and the law on locus standi were considered in great detail by the Supreme Court in *Government of Malaysia v Lim Kit Siang.*[5] In

that case, the Supreme Court traced the development of such law in England starting with *Boyce*'s case[3] followed by a number of other cases which evinced a clear need to liberalize such law, and which finally culminated in the introduction of O 53 of the United Kingdom Supreme Court Rules. The position in Malaysia is somewhat different and the Supreme Court in the *Government of Malaysia* case,[5] by a majority of 3–2, decided not 'to depart from the rule of locus standi accepted by the highest court in England prior to O 53'. This is because O 53 has not been accepted in Malaysia and the court has therefore to fall back on *Boyce*'s case.[3]

Buckley J in *Boyce*'s case[3] stated as follows [at p 114]:

> A plaintiff can sue without joining the Attorney General in two cases: first, where the interference with the public right is such as that some private right of his is at the same time interfered with (eg where an obstruction is so placed in a highway that the owner of premises abutting upon the highway is specially affected by reason that the obstruction interferes with his private right to access from and to his premises to and from the highway); and, secondly, where no private right is interfered with, but the plaintiff, in respect of his public right, suffers special damage peculiar to himself from the interference with the public right.

The Supreme Court also considered the two landmark cases in Malaysia on locus standi namely *Lim Cho Hock v Government of the State of Perak & Ors*[6] and *Tan Sri Haji Othman Saat v Mohamed bin Ismail,*[7] in which it was said in the latter case [at p 179]:

> The sensible approach in the matter of locus standi in injunctions and declarations would be that as a matter of jurisdiction, an assertion of an infringement of a contractual or a proprietary right, the commission of a tort, a statutory right or the breach of a statute which affects the plaintiff's interests substantially or where the plaintiff has some genuine interest in having his legal position declared, even though he could get no other relief, should suffice.

In the above two cases, the court held that the plaintiffs has the necessary locus standi on the basis that they had genuine private interests to be furthered and protected.

It appears to me from these two cases, to possess locus standi requires that the applicant should be seeking to protect or vindicate an interest of his own.

In this suit, it is alleged by the plaintiff that by using the words 'sesiapa sahaja' the insinuation, in that context, is not only levelled at the rulers but is indirectly categorizing the Malays as capable of committing offences under the ISA and he, the plaintiff, has a cause of action against the defendant for libel and slander, apart from the latter being liable for sedition, as the plaintiff is of the Malay race and a subject of the Sultan of Kelantan.

Since it was said in *Karpal Singh v Sultan of Selangor,*[4] [at p 67], that 'an action may not be brought to court by a stranger', it is therefore contended by the defendant that the position of the plaintiff is akin to that of a stranger and thereby gives him no standing to pursue the alleged claim.

A In my judgment, having regard to the cases heretofore decided and following the judgment of Gibbs J in *Australian Conservation Foundation Inc v Commonwealth of Australia and Ors*[8] which says: 'A belief, however strongly felt, that the law generally or a particular law should be observed or *that conduct of a particular kind should be prevented*, does not suffice to give its possessor locus standi' (emphasis added), I hold that the plaintiff, purely on B the ground of being of the Malay race and a subject of the Sultan of Kelantan, is not clothed with the necessary locus standi since there does not seem to be present any form of interference of his private right beyond that of any other Malays and subjects of the Sultan of Kelantan, a qualification which is essentially required to be proved.

C One of the authorities sent in by Dato' Wan Mustapha, counsel for the plaintiff, (though not referred to at the hearing) is *Barnard & Ors v National Dock Labour Board & Ors*,[9] a decision of the English Court of Appeal which deals with the question of declaration. I find that this authority is of no assistance to the plaintiff as it touches upon the question of discretion of the court to grant a declaration sought for but it does not resolve the question D of locus standi as the plaintiffs were the persons directly affected in the matter.

In the circumstances, I hold that the plaintiff has no locus standi to bring this suit against the defendant.

On the plaintiff's allegations of libel and slander being committed against him, it is clear to me that in the context of the words uttered by the E defendant, there is nothing to show that such utterance was intended to or meant for the plaintiff if at all the words uttered were tantamount to defamatory remarks. It is trite law that the person who can maintain an action against the defendant is the one who is defamed and not any other individual as an action for defamation is purely a personal one and neither F can it be assigned. The right of a person to bring an action for defamation has been amply and lucidly discussed by Wan Yahya J (as he then was) in *Atip bin Ali v Josephine Doris Nunis & Anor*.[10] A number of authorities, both English and Indian, were referred to and highlighted by his Lordship which I consider is more than sufficient to support the defendant's averment that the suit filed by the plaintiff is not maintainable against him. The plaintiff G in this suit fails to show that the alleged defamatory words bear reference to him — it is not sufficient if the words referred to a class of persons or to a particular race as was said in *Knupffer v London Express Newspaper Ltd*:[11] ' ... when defamatory words are written or spoken of a class of persons it is not open to a member of that class to say that the words were spoken of him unless there was something to show that the words about the class refer to him as H an individual. In this case there was nothing to show that the words referred to the appellant as an individual and his claim, therefore, failed.' See also *Bruce v Odhams Press Ltd*.[12]

Grounds (b) & (c)

I I propose to deal with these two grounds simultaneously as they bear some nexus — one concerning the jurisdiction of the court and the other the power to institute proceedings in court.

By the very nature of the claim the plaintiff is alleging that a criminal offence under the Act has been committed by the defendant. Section 4(1) of the Act, inter alia, states that an offence is committed if a person:

(a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act which has or which would, if done, have a seditious tendency;
(b) utters any seditious words;
...

The words 'seditious' and 'seditious tendency' have been defined in the Act. Under s 5 of the Act, 'No person shall be prosecuted for an offence under section 4 without the written consent of the Public Prosecutor. In such written consent the Public Prosecutor may designate any court within Malaysia to be the court of trial.' And the powers of the public prosecutor who is the Attorney General, to institute criminal proceedings are set out in art 145(3) of the Federal Constitution as follows:

> The Attorney General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence, other than proceedings before a Syariah court, a native court or a court martial.

Again, in reference to *Government of Malaysia v Lim Kit Siang,*[5] there is the judgment of Salleh Abas LP (as he then was) which goes as follows [at p 26]:

> It is unacceptable that criminal law should be enforced by means of civil proceedings for a declaration when the court's power to grant that remedy is only at the discretion of the court. Jurisdiction of a criminal court is fixed and certain. The standard of proof in a criminal case is different from that required in a civil case and moreover the Attorney General is the guardian of public interest and as the public prosecutor, he, not the court, is in control of all prosecutions.

In the same case, Abdul Hamid Omar CJ (Malaya) (as he then was), said at p 32:

> ... my view is clear in that fundamentally where a statute creates a criminal offence by prescribing a penalty for the breach of it but not providing a civil remedy — the general rule is that no private individual can bring an action to enforce the criminal law, either by way of an injunction or by a declaration or by damages. I am inclined to the view that it should be left to the Attorney General to bring an action, either of his own motion or at the instance of a member of the public who 'relates' the facts to him ...

In the circumstances, I agree with Mr Karpal Singh that the issues which relate to the alleged criminality do not come within the purview of a civil court as otherwise, the civil court might be accused of intruding into the domain of the criminal court. In the instant case, it is clear that the plaintiff has made a complaint to the wrong forum.

Ground (e)

It is submitted by the defendant that the alleged publication does not amount to defamation or sedition and it does not give rise to any cause of

A action against him. It is the defendant's submission that in the context where the impugned words are used, they cannot be said to be reasonably capable of referring to the plaintiff and that it is not reasonably capable of bearing a defamatory meaning in the minds of reasonable persons. Having carefully considered the obnoxious passage, I am satisfied that the B objectionable words are not defamatory in character, even to bring in aid the concept of innuendo, and what is more, it is too remote to bear any reference to the plaintiff.

Counsel for the plaintiff refers to O 15 r 16 of the RHC which says:

> No action or other proceeding shall be open to objection on the ground that a C merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether or not consequential relief is or could be claimed.

He claims that a declaration sought under O 15 r 16 is not open to objection. I am afraid I do not agree with him for it is an accepted rule of practice that a party must have the necessary locus standi before it is D allowed to appear and be heard in legal proceedings. Furthermore, the power to make a declaration is discretionary and there are decided cases which expound that to qualify for a declaration, the plaintiff must show not only that it is not inequitable for the court to grant it but also it is not contrary to the accepted principle upon which the court exercises its E discretion.

Hashim Yeop Sani CJ (as he then was) in *Government of Malaysia v Lim Kit Siang*[5] had occasion to say [at p 40], 'Order 15 r 16 of our Rules of the High Court 1980 cannot be made into a basis of jurisdiction for the court to entertain an action which is not properly before it'. This is in consonance with what was said by Viscount Dilhorne in *Gouriet v Union of Post Office* F *Workers & Ors*[13] that O 15 r 16 'does not provide that an action will lie whenever a declaration is sought. It does not enlarge the jurisdiction of the court. It merely provides that no objection can be made on the ground only that a declaration is sought.'

One last submission advanced by counsel for the plaintiff is that if the G defendant chooses, as he does in his application, to strike out the writ of summons and the statement of claim, he should have filed a conditional appearance; now that he has put in an unconditional appearance, he is therefore barred from proceeding with the said application.

The effect of conditional appearance is fully explained in *Mallal's Supreme Court Practice* (2nd Ed) at para 12/1/3. Such an appearance reserves to the H defendant 'the right to apply to the court to set aside the writ or service thereof for an alleged informality or irregularity which renders either the writ or the service invalid'. The position in the instant case is different — the defendant is not challenging the validity of the writ or service thereof but proceeds on the premise that the plaintiff has no locus standi to bring the said suit against him, the suit is clearly scandalous, frivolous, vexatious I and/or an abuse of the process of the court as the alleged publication does not amount to defamation or sedition — the allegations do not evince any cause of action against him. In the circumstances I am satisfied that the

course of action taken by the defendant is in line with O 18 r 19 of the RHC and that the application is made promptly, ie before service of the statement of defence on the plaintiff.

After viewing the facts and the law, I hold that the defendant succeeds in his application and in the event, I grant the order in terms of his application. The writ of summons and the statement of claim are therefore struck out. Costs to the defendant.

Order accordingly.

Reported by Premala Pathmanathan